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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/574,457

04/04/2006

John Carroll

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DES MOINES, IA 50309-2350

EXAMINER

WATKINS III, WILLIAM P

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|--------------------------------------|--|
| Office Action Summary | Application No. 10/574,457 | Applicant(s) CARROLL, JOHN | |
| | Examiner William P. Watkins III | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/6/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The 112 rejection given in section 2 of the detailed portion of the office action mailed 10/07/2008 is withdrawn in view of applicant's claim amendments filed 06 February 2009.

2. The amendment filed 06 February 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The paragraph inserted between paragraphs 3 and 4 is new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. Claims 1-3, 6, 8-12 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laaksonen (WO 03/041525 A1) in view of Rayfield et al. (U.S. 4,242,769).

Laaksonen teaches a foam layer with slits to allow breath-ability that is joined to a fabric layer and can be used in flotation devices (abstract, page 4, first paragraph). Rayfield et al. teaches the use of a breathable water impermeable fabric as an outer layer in a floatation device (col. 1, line 65 through col. 2, line 20). The instant invention claims a foam layer with slits next to a breathable waterproof fabric. It would have been

obvious to one of ordinary skill in the art to have used a waterproof breathable fabric as the fabric of Laaksonen in order to protect the user of the jacket from moisture.

4. Claims 4-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laaksonen (WO 03/041525 A1) in view of Rayfield et al. (U.S. 4,242,769) as applied to claims 1-3, 6-12 and 14 above, and further in view of Tsai (GB 2 312 643 A).

Tsai teaches the use of "Y", "V" and other slit patterns that allow breath-ability in foam layers. The instant invention claims foam layers with various slit patterns that allow breath-ability. It would have been obvious to one of ordinary skill in the art to have used various cross type slit patterns in the foam layer of Laaksonen in view of Rayfield in order to optimize the breath-ability for a given application because of the teachings of Tsai.

5. Applicant's arguments filed 06 February 2009 have been fully considered but they are not persuasive.

Applicant argues that the instant claim language that the slits are closed unless the foam is flexed defines over Laaksonen '525. The examiner disagrees, Figure 1 clearly shows the slits are closed when the garment is not being worn and Figure 2 show the slits being open when the garment is flexed and stretched in the process of being put on and worn. This clearly meets applicant's claim language.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WW/ww
July 21, 2009

/William P. Watkins III/
Primary Examiner, Art Unit 1794